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May 10, 2024

Via CM/ECF

Mr. Mark J. Langer
Clerk, United States Court of Appeals
  for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W., Room 5423
Washington, D.C. 20001

> **Re: *Matthew Green et al. v. U.S. Department of Justice et al.*, No. 23-5159 (D.C. Cir.)**

Dear Mr. Langer:

I write to correct two misstatements I made at oral argument on May 6, 2024 in the above-captioned case. I intended to communicate Plaintiffs-Appellants' position that the circumvention prohibition at 17 U.S.C. § 1201(a)(1)(A) is not severable from the provisions that allow the Librarian of Congress to grant exceptions to that prohibition (17 U.S.C. § 1201(a)(1)(B)-(E)), though it is severable from the prohibition of trafficking at 17 U.S.C. § 1201(a)(2). *See* Opp. to Mot. to Dismiss, *Matthew Green v. U.S. Dep't of Justice*, No. 1:16-cv-1492 (D.D.C. Oct. 18, 2016), ECF No. 18 at 29 & n.13 (citing *Am. Fed'n of Gov't Emps. v. Pierce*, 697 F.2d 303, 307 (D.C. Cir. 1982)).

Accordingly, when Judge Pillard asked what would happen if the Court "invalidated" "the Librarian of Congress triennial review," I responded that "it would only affect the 1201(a) circumvention regime … nothing in trafficking would be affected." Oral Argument audio at 31:26-52. I misunderstood Judge Pillard's next two questions, however, and my responses gave the misimpression

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that Plaintiffs-Appellants believe Section 1201(a)(1)'s circumvention prohibition
would survive if its triennial rulemaking provisions were invalidated. *Id.* at 31:52-
32:13. I apologize for this inadvertent error.

Respectfully submitted,

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/s/ Benjamin Margo

Benjamin Margo

cc: All Counsel (via CM/ECF)